APPENDIX-A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

WOODY VOINCHE

CIVIL ACTION NO. 93-2203

-VS-

SECTION A (JUDGE LITTLE)

CIA

RULING

Before this court is a motion to dismiss filed by the CIA. Plaintiff Voinche filed this claim challenging the CIA's failure to respond in a timely fashion to his Freedom of Information Act(FOIA) request for documents chronicling the Soviet Union's activities to control the weather. The CIA contends that because the Agency has made the requested documents available to Voinche, this claim is now moot. We agree and GRANT the CIA's motion to dismiss.

Under the FOIA, an individual has the right to seek judicial review of an agency's handling of an FOIA request after exhausting all administrative appeals. Voinche v. FBI, 999 F.2d 962, 963 (5th Cir. 1993) (citing Voinche v. United States Dep't of Air Force, 983 F.2d 667, 669 (5th Cir.), cert. denied, 114 S. Ct. 70 (1993)). If the agency has failed to address the individual's administrative appeals within 20 days of their filing, however, the individual is deemed to have completed the administrative appeals process and has standing to seek judicial review

of the agency's failure to act within the statutorily prescribed time periods. 5 U.S.C. 552(a)(6)(C). Such was the case here, where the plaintiff Voinche brought this action because the CIA failed to address his appeal within 20 days of it filing.

The sole issue in this case is the propriety of the CIA's failure to respond to Voinche's request within the time period established in the FOIA. We find that the CIA has recently made the documents available to Voinche in response to his FOIA request. Therefore, this case is moot as to the issue of the CIA's failure to respond.

Voinche argues that this court should retain jurisdiction over his case so that he will not be required to file a second lawsuit if the documents offered by the CIA do not fully comply with his FOIA request. We decline to do so. The only issue present in this lawsuit is whether the CIA was justified in not responding within the time frames established in the FOIA. By delivery, this issue is now moot. We cannot "retain" jurisdiction over an issue that was never presented in the case. Accordingly, defendant's motion to dismiss is GRANTED.

Alexandria, Louisiana

27 March 1995

"s/_____"
F.A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

WOODY VOINCHE

CIVIL ACTION NO. 93-2203

-vs-

SECTION A(JUDGE LITTLE)

CIA

JUDGMENT

For the reasons assigned this date, the Central Intelligence Agency's motion to dismiss with prejudice is GRANTED and plaintiff Voinche's claim is DISMISSED.

Alexandria Louisiana

27 March 1995

"s/_____"

F. A. LITTLE, JR

UNITED STATES DISTRICT JUDGE

APPENDIX-B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30352
Conference Calender

WOODY VOINCHE,

Plaintiff-Appellant,

versus

CENTRAL INTELLIGENCE AGENCY,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 93-CV-2203

Before POLITZ, Chief Judge, and REAVLEY and SMITH, Circuit Judges. PER CURIAM:*

Woody Voinche filed a Freedom of Information Act (FOIA) request with the Central Intelligence Agency (CIA), requesting CIA reports on the former Soviet Union's ability to alter the weather. The CIA advised

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Voinche that, due to a heavy volume of FOIA requests, it was unable to respond within the 10 working days stipulated by the FOIA.

Voinche filed suit in the district court challenging the CIA's failure to respond timely to his request. Pursuant to a motion by the CIA, the district court granted a six-month stay in the proceedings. Subsequently, the CIA was granted an extension of time until March 4, 1995, to respond to Voinche's motion for release of the records.

On March 7, 1995, the CIA moved to dismiss Voinche's complaint pursuant to Fed. R. Civ. P. 12(b)(1) based on the fact that it had completed Voinche's FOIA request on March 3, 1995. The motion was granted. This court reviews a district court's dismissal under Rule 12(b)(1) de novo. Musslewhite v. State Bar of Texas, 32 F.3d 942, 945 (5th Cir. 1994), cert. denied, 115 S. Ct. 2248 (1995).

"(A) case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969). The CIA's response to Voinche's request rendered moot his challenge to the tardiness of the CIA's response. See Voinche v. F.B.I., 999 F.2d 962, 963 (5th Cir. 1993).

Regarding Voinche's argument that the CIA misrepresented the date on which it released the documents, the CIA's notification that it would be releasing the documents after Voinche paid the applicable fee was sufficient to moot Voinche's suit. See 552(a)(6)(A)(i) (timeliness requirement applies to notification regarding whether the agency will comply, not actual release of the records). The fact that the CIA did not respond to Voinche's request until after suit was filed is of no consequence. See Voinche v. U.S. Dept. of Air Force,

983 F.2d 667, 670 (5th Cir.) (citing Rocky v. King, 900 F.2d 864, 866 (5th Cir. 1990) ("The mootness doctrine requires that the controversy posed by the plaintiff's complaint be 'live' . . . throughout the litigation.")), cert. denied, 114 S. Ct. 70 (1993).

Regarding Voinche's argument that the district court should have retained jurisdiction over his case until it was determined whether the CIA complied with his FOIA request, Voinche's suit challenged only the timeliness of the CIA's response; therefore, the issue whether the CIA's response was adequate is not apposite. See Voinche, 999 F.2d at 963. The judgment of the district court is AFFIRMED.

APPENDIX-C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

WOODY VOINCHE

CIVIL ACTION NO. 96-1708

-vs- SECTION "A" (JUDGE LITTLE)

CENTRAL INTELLIGENCE AGENCY

RULING

Before this court is defendant's motion to dismiss. For the following reasons, defendant's motion is GRANTED.

I.

Petitioner Woody Voinche's sojourn in search of information on the former Soviet Union's capability to engage in "weather modification" began on 17 May 1991.[1] Voinche filed a Freedom of Information Act (FOIA) request with the Central Intelligence Agency(CIA) on that date. Without engaging in lugubrious detail, we note that Voinche's request meandered through the bureaucratic channels. After repeated delays, appeals, and a suit in this court, the CIA released certain documents to

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[1] This court admittedly lacks knowledge of Russian weather modification capabilities. We suspect, however, that Mark Twain was right : "Everybody talks about the weather, but nobody does anything about it." If this were not true, someone would have fixed Louisiana's sweltering summers long ago.

Voinche on 18 April 1995. On 20 March and 23 April 1996, Voinche, not satisfied with the CIA's response, filed successive administrative appeals. The CIA denied the appeals on the basis that the thirty-day period for appeal had expired. Voinche filed this FOIA suit in this court pursuant to 5 U.S.C. 552, asserting that the CIA's FOIA response was inadequate. The CIA moves to dismiss on the ground that judicial review is precluded by Voinche's failure to seek timely administrative review.

II.

Generally, a plaintiff's complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). When considering a motion to dismiss for failure to state a claim, the district court must take the factual allegations of the complaint as true and resolve any ambiguities or doubts regarding the sufficiency of the claim in favor of the plaintiff. Fernandez-Montes v. Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993). If it appears beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief, the complaint should be dismissed, though leave to amend should be liberally granted. Id. at 285.

III.

The CIA asserts that Voinche's suit is precluded because he failed to seek administrative review of the adequacy of the CIA's 18 April 1995 response in a timely manner. The procedures governing FOIA requests for documents from the CIA are set forth in 32 C.F.R. 1900.51. A FOIA appeal "shall be exercised within thirty days of the date of receipt of notification of the right of appeal." 32 C.F.R. 1900.51(c). For good cause

shown, the appeal period may be extended by thirty more days. FOIA requires exhaustion of administrative remedies prior to seeking judicial review. Voinche v. Federal Bureau of Investigation, 999 F.2d 962, 963 (5th Cir. 1993).

In this case, on 18 April 1995 the CIA provided Voinche written notice of his right to appeal the adequacy of the CIA response to his FOIA request. Voinche, however, did not file his appeal for eleven months. For that reason, the CIA's motion is granted.

We stress that the CIA's tardiness in responding to Voinche's request has no relevancy to this ruling. Voinche previously had the opportunity to litigate the timeliness of the CIA's response. That litigation was rendered moot by the CIA's April 1995 response. Today we find simply that Voinche failed timely to appeal the adequacy of the CIA's response.

IV.

As Voinche's complaint fails to state a claim, the CIA's motion to dismiss is GRANTED and Voinche's suit is DISMISSED.

Alexandria, Louisiana

25 November 1996

"s/ _____"
F.A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

ALEXANDRIA DIVISION

WOODY VOINCHE

CIVIL ACTION NO. 96-1708

-vs-

SECTION"A" (JUDGE LITTLE)

CENTRAL INTELLIGENCE AGENCY

JUDGMENT

For written reasons given this date, plaintiff Woody Voinche's complaint is DISMISSED.

Alexandria, Louisiana

25 November 1996

"s/_____"

F.A. LITTLE, JR.

UNITED STATES DISTRICT JUDGE

APPENDIX-D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-31270
Conference Calender

WOODY VOINCHE,

Plaintiff-Appellant,

versus

CENTRAL INTELLIGENCE AGENCY,

Defendant-Appellee.

Appeal from the United States District Court
for the Westerm District of Louisiana
USDC No. 96-CV-1708

Before SMITH, STEWART, and DENNIS, Circuit Judges.
PER CURIAM:*

Woody Voinche appeals the district court's dismissal of his civil suit in which he challenged the adequacy of the CIA's response to his request made under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The district court dismissed the suit upon motion of the CIA, concluding that the FOIA requires the exhaustion of administrative remedies prior to seeking judicial review and

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* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4

that Voinche failed to meet the exhaustion requirement when he failed to timely file an administrative appeal challenging the adequacy of the CIA's response to his request.

We have reviewed the record and the briefs of the parties and find no reversible error. Voinche's appeal is frivolous and thus is DISMISSED. See 5th Cir. R. 42.2.; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). We caution Voinche that future frivolous appeals will invite the imposition of sanctions. To avoid sanctions, Voinche should review any pending appeals to ensure that they do not raise frivolous arguments.

APPEAL DISMISSED; SANCTION WARNING ISSUED.

APPENDIX-E (1st appeal letter)
August 15, 1991

Mr. John H. Wright
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC 20505

Dear Mr. Wright:

Pursuant to 5 USC 552(a)(6)(A)(i)(ii), this is an appeal of your July 8, 1991, response to my May 17, 1991, request citing a Jack Anderson article referring to CIA reports and the Soviet's use and experimentation with various weather-modification techniques.

Mr. Anderson, in the SAN GABRIEL VALLEY TIMES of Sept. 27, 1989, states in his article,

> For years the Soviet Union has been working on weather modification techniques that could be used in a covert "weather war" against the United States or Europe. The Central Intelligence Agency has tracked these plans and here is a list compiled from CIA reports:...One CIA report says the techniques used by the Soviets have potential military uses because they can stir up the weather unexpectedly.

Jack Anderson is a nationally syndicated columnist and I do not believe he would cite CIA reports if there were no such reports available on this subject.

In your July 8, 1991, letter you stated that FOIA "provides for public access to reasonably described records." Semantics notwithstanding, I believe I have ad-

hered to that standard. The court in Zemansky stated,

> district court could not require environmentalist's request to be in form different from that of any other person requesting information under Act, and only requirements of Act were that request reasonably describe records and comply with agency criteria.(Zemansky v. United States E.P.A., 767 F.2d 569(9th Cir. 1985) (p. 570)

I believe the CIA has these reports, but just does not want to release these. I would prefer your releasing these to me voluntarily, but will file a complaint in Federal District Court to obtain these if necessary.

Thank you...

Sincerely,

Woody Voinche
1107 N. Main
Marksville, LA
71351

APPENDIX-F (second appeal letter)

June 28, 1993

Mr. John H. Wright
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC
20505

Dear Sir:

In reference to your March 6, 1992, letter to me on request F92-0310 "for reports concerning Soviet weather modification techniques". I had already appealed this request under the time limit provisions of FOIA, but am again appealing this March 6, 1992, response pursuant to 5 USC 552(a)(6)(A)(i)(ii).

Thank you

Sincerely,

Woody Voinche
1107 N. Main
Marksville, LA
71351

APPENDIX-G (3rd appeal letter)

March 20, 1996

Mr. John H. Wright
CIA Information Review Committee
Information And Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC
20505

Dear Mr Wright:

I am attaching a copy of an April 18, 1995, letter under which the CIA released information to me on Soviet weather modification techniques. This is a First appeal of all exemptions claimed.

In addition, I am attaching a copy of a June 21, 1977, New York Times, article on the Super Magnet sold to the Soviets which has the potential to change lines of magnetic force and alter the course of the jet stream. Attached you will also find a Jack Anderson article compiled "from CIA reports" where he discusses the Soviets ability to create "artificial lightning" and "considered artificially triggering earthquakes". You have not released any information on this, although these articles prove you have information about this, therefore making the CIA's release of information insufficient.

Further, the CIA's letter of April 18, 1995, states, "Other records have been withheld in their entirety...". Case law has already shown that an agency is not supposed to withhold entire documents.

Finally, I point out that the table of contents of the WEEKLY SURVEYOR and SCIENTIFIC AND TECHNI-

CAL INTELLIGENCE REPORT released by you have been exempted in some cases. Why exempt a table of contents? I also note that you have not released any reports from these CIA publications with a date later than the mid-to-late 1970's. Did the Soviets quit doing research in this area in the 1980's or the CIA just does not want to release the most up-to-date information on this subject. Will you release the table of contents to the WEEKLY SURVEYOR and STIR for the latter part of the 1980's to me?

I am appealing all aspects of the CIA's response on this...

Sincerely,

Woody Voinche
1132 N. Main
Marksville, LA
71351

APPENDIX-H (4th appeal letter)

April 23, 1996

Mr. John H. Wright
Mr. Lee S. Strickland
CIA Information Review Committee
Information and Privacy Coordinator
CENTRAL INTELLIGENCE AGENCY
Washington, DC
20505

Dear Sirs:

We refer to your March 29, 1996, letter responding to my first appeal of your response to my FOIA request for information on Soviet weather modification, artificial earthquakes, the use of a super-magnet to alter the jet stream as discussed by a New York Times article, etc.

This is a second appeal of every aspect of your March 29, 1996, letter and all redacted sections of information that has already been released to me...Thank you...

Sincerely,

Woody Voinche
1132 N. Main
Marksville, LA
71351